

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 16

Date Signed: May 21, 1979

Revised: November 1998

Revised by: Wendy Warren

MEMORANDUM

SUBJECT: Guidance for Implementation of 40 CFR Part 25
Public Participation Regulations in State
Public Water System Supervision Program

FROM: Alan Levin, Director (signed by Alan Levin)
State Program Division (WH-550)

TO: Regional Water Supply Representatives

An initial draft dated February 1, 1979, of this guidance was circulated among all Regional Water Supply Representatives for review and comment at our meeting in San Francisco. Several written and verbal comments were received. As a result of these comments a list of examples of information and/or consultation mechanisms has been included as part of the attached guidance.

A number of comments addressed the definition of "significant decisions." The definition was intentionally written in a manner to allow some degree of flexibility for the Regions when evaluating and approving the States' public participation work element in the grant application. A suggestion was made that rulemaking be included under "significant decisions." Part 25, Public Participation Regulations (Section 25.2(a)(1) only covers State rulemaking under the Clean Water Act and Resource Conservation and Recovery Act; therefore, it was not included. Additionally, it was suggested that State-EPA Agreements be covered under this section. Since Water Supply is only a small portion of these agreements this reference has not been included. Public Participation in State-EPA Agreements will be covered under consolidated guidance for affected programs which is currently under development.

Attachment

**PROGRAM GUIDANCE FOR
IMPLEMENTATION OF PUBLIC PARTICIPATION REGULATIONS
(40 CFR PART 25) IN STATE PUBLIC WATER SYSTEM SUPERVISION
PROGRAM PART B - PUBLIC WATER SYSTEMS OF (PL 93-523, as Amended)**

INTRODUCTION

The Public Participation Regulations (40 CFR Part 25) require that EPA, State and Substate agencies will provide for, encourage, and assist public participation. The regulations are intended to ensure that all interested and affected members of the public have an opportunity to participate in the decision-making processes under covered programs.

Public participation is intended to seek accurate impressions of public attitudes by providing adequate information and opportunity to interested and affected parties so that they can express their views effectively. Thus, any public participation efforts must provide access to the decision-making process, seek input from affected and interested parties, provide due consideration to public viewpoints and demonstrate that those viewpoints have been considered in the decision-making process.

Specifically, all public participation efforts of EPA, State and substate agencies are expected to fulfill the following objectives:

- (1) - - to assure that the public has the opportunity to understand official programs and proposed actions, and that government understands and fully considers public concerns;
- (2) - - to assure that no significant government decision on any activity covered under Part 25 is made without consulting interested and affected segments of the public;
- (3) - - to assure that government action is as responsive as possible to public concerns;
- (4) - - to encourage public involvement in implementing environmental laws;
- (5) - - to keep the public informed of significant issues and proposed project or program changes as they arise;
- (6) - - to foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and
- (7) - - to encourage opportunities for participation and to stimulate and support participation.

PURPOSE

The purpose of this guidance is to clarify and describe those elements of the public participation regulations that impact the public water system supervision program. There will be a discussion of significant decisions and a description of an expanded public participation work element to be included in the State Water Supply program plans. This guidance is directed to State agencies with primary enforcement responsibility; Regional offices exercising primacy within other States; and States with program grants working toward the assumption of primacy.

GUIDANCE FOR SIGNIFICANT DECISIONS

In keeping with the intent of the public Participation Regulations the primacy agency or grantee working toward the assumption of primacy should provide for and encourage public participation in significant decisions necessary for implementation of State Public Water System Supervision Program.

For purposes of implementing the State Public Water System Supervision Program, EPA considers the following to be significant decisions subject to the application of public participation requirements of the regulations:

- (1) - - Program Policy Guidance: In order to implement the specific regulatory requirements of the SDWA, the State, over time, will develop policies and strategies based on the interpretation of State regulatory provisions adopted pursuant to the requirements of the National Interim Primary Drinking Water Regulations Implementation Regulations. The impact of such policies and strategies is often as great as that of enabling statutes and regulations. The States should provide opportunities for public consultation during the development stages of such policies and strategies.
- (2) - - Granting of Variances and Exemptions: Sections 1415 and 1416 of the SDWA, as amended, require that if a primacy agency grants a variance or an exemption public participation in the form of public hearings must be practiced as follows:
 - (a) The primacy agency must provide a notice and opportunity for public hearing prior to granting or denying a variance to a public water system from a MCL or specified treatment technique. The same kind of public participation is required to be utilized in approving within a year's time the compliance schedule for the variance.

- (b) If the primacy agency has granted an exemption to a public water system, a compliance schedule, must be approved within a year's time. A notice and opportunity for public hearing is required to be provided before such a compliance schedule is approved by the primacy agency.

PUBLIC PARTICIPATION WORK ELEMENT

The State water supply program plans submitted to EPA for approval includes grant eligible program elements. One such element is public participation. To comply with the Public Participation Regulations, an expanded program effort for this element is required.

The expanded public participation effort should include, as a minimum, in the required program plan the development of a mailing list of publics interested in water supply issues and the development of a State public participation work plan. The work plan should identify a schedule of public participation activities including a brief description of information and/or consultation mechanisms to be used and points where responsiveness summaries will be prepared.

The attached list gives some examples of information and/or consultation methods that could be used.

Responsiveness Summaries are required for all significant decisions including those referenced above and others which may be identified by the State or EPA. The development of a work plan will identify future public participation program efforts to be included in the overall State water supply program plans.

In submitting program plans the narrative portion of the plan (Part IV, Format I) should reflect the above expanded effort and a summary of projected public participation activities required by the SDWA. A summary of manpower and resources required for the total effort should also be presented in the narrative. Accomplishments of public participation activities should be narrated in Part IV, Format II of the program plans. An approvable public participation work plan is required for grant award and should be submitted with the grant application. The attached check list is to be used in evaluating work plans.

A mid-year evaluation of grantee public participation performance shall be carried out in accord with Section 25.12(a)(2)(i). These evaluations shall utilize the public participation work plan.

Responsiveness Summaries and other information as appropriate, shall be evaluated using the attached check list. EPA responsibilities in the event of grantee failure to meet public participation requirements are set forth in Section 25.12(a)(2)(ii).

At the next submission of the State water supply program plans for FY 80, special emphasis will be placed on the review of the public participation data element.

EXAMPLES OF INFORMATION AND/OR CONSULTATION MECHANISMSConsultation

- ! public meetings
- ! public hearings
- ! review groups
- ! task forces
- ! ad hoc committees
- ! workshops
- ! seminars
- ! public opinion surveys
- ! informal personal
communications with
individuals and groups
- ! phone-in radio programs

Information

- ! fact sheets
- ! newsletters
- ! news releases
- ! brochures
- ! briefings
- ! seminars
- ! radio or TV
announcements
- ! responsiveness
summaries
- ! hotline or
info number
- ! summaries of technical
reports

CHECKLIST FOR REVIEW OF PUBLIC PARTICIPATION WORK PLAN OR ELEMENT

AUTHORITY: 40 CFR 25.11

PURPOSE

The Public Participation Workplan or program element should clearly describe the schedule and methods to be used to notify, inform and consult with the public throughout the project period. The workplan should tie the schedule and methods to be used directly to the major decision points in the grant activities. In addition, the workplan should identify staff contacts, the target publics to be reached, and how and when the public will be informed of the disposition of their comments. The following checklist identifies those mandatory components of the Public Participation Work Plan:

- | | | |
|---|--|--|
| ! | Staff commitment | |
| ! | Budget | |
| ! | Schedule of public
participation activities | |
| ! | Information mechanisms described | |
| ! | Consultation mechanisms described | |
| ! | Responsiveness summary schedule | |
| ! | Target publics identified | |

CHECKLIST FOR REVIEW OF GRANTEE RESPONSIVENESS SUMMARY

AUTHORITY: 40 CFR 25.8

PURPOSE

At key decision points, a responsiveness summary should be prepared to give the public feedback on major issues raised, and how this input influenced grantee decisions or the rationale for not using particular comments. At the end of the project period, the grantee should prepare a brief analysis of the public participation program which reflects an overall qualitative evaluation of the effectiveness of the program, as well as experience and recommendations on particular approaches to public participation. The following checklist identifies those mandatory components of the Responsiveness Summary:

For each responsiveness summary

- | | | |
|---|--|-------|
| ! | Public participation activity described | _____ |
| ! | Summary of issues raised | _____ |
| ! | Summary of major comments | _____ |
| ! | Description of modifications made | _____ |
| ! | Rationale for rejection of comments | _____ |
| ! | Additionally for the final grantee
responsiveness summary | _____ |
| ! | Grantee analysis of public participation program | _____ |

It is also recommended that the grantee request evaluations from any existing advisory group and provide an opportunity for other participating publics to contribute to the evaluation.